

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 1:04CR498
)	
DALE L. BOETH,)	
)	
Defendant.)	

STATEMENT OF FACTS

The United States and the defendant, Dale L. Boeth ("Boeth"), agree that had this matter proceeded to trial, the United States would have proven the facts set forth in this statement of facts beyond a reasonable doubt. Unless otherwise stated, the time periods for the facts set forth herein are at all times relevant to the charge in the Information.

I. BACKGROUND

(1) From about January 2000 until about November 2001, Boeth was employed at PurchasePro.com, an internet software company headquartered in Las Vegas, Nevada ("PurchasePro"). During this time, Boeth held the position of Vice President of Strategic Development until he was promoted to Senior Vice President of Strategic Development and later served as Senior Vice President of Consulting Services at PurchasePro.

(2) In 2000 and 2001, PurchasePro was engaged in the sale of sourcing software, materials management and procurement software and services. PurchasePro's common

stock traded on the Nasdaq National Market under the symbol "PPRO". PurchasePro had shareholders located throughout the United States, including in the Eastern District of Virginia.

(3) By mid-2000 and continuing through 2001, PurchasePro's principal product was a so-called business-to-business "marketplace license". As promoted by PurchasePro, the business-to-business marketplace license allowed small and large businesses to buy and sell products on the internet in an allegedly cost efficient manner. PurchasePro sold software to marketplace license purchasers that allegedly enabled those purchasers either to buy and sell products by participating directly in PurchasePro's own web-site based marketplace or to create their own branded marketplace using PurchasePro's software.

(4) As a senior officer at PurchasePro, Boeth's duties and responsibilities included, but were not limited to channel partner recruitment and professional consulting services. At various times while at PurchasePro, Boeth reported to Jeffrey Anderson, also a senior officer, and others.

(5) As a public company, PurchasePro was required to comply with the rules and regulations of the United States Securities and Exchange Commission ("SEC"). Those rules and regulations are intended to protect members of the investing public by, among other things, requiring that a company's financial statements are accurately recorded and reported to the investing public. PurchasePro made periodic filings with the SEC which included, among other things, its financial statements.

(6) As a public company, PurchasePro retained an independent public accounting firm to act as PurchasePro's independent, outside auditors ("PurchasePro's auditors"). Among other responsibilities, PurchasePro's auditors were required to decide

whether to approve the recognition of revenue resulting from the sale of marketplace licenses and other products and services in PurchasePro's audited financial statements. Boeth understood that PurchasePro required that a contract be executed in writing between the parties by the end of the quarter for which PurchasePro was recognizing the revenue. Boeth admits that he and other senior members of PurchasePro's management had the ultimate responsibility for proper revenue recognition of PurchasePro's sales and services and for the reporting of accurate financial statements to the public.

II. THE CONSPIRACY TO DEFRAUD

(7) From in or about December 2000 to in or about June 2001, in the Eastern District of Virginia and elsewhere, Boeth admits that he and other senior members of PurchasePro's management and others knowingly and unlawfully combined, conspired, confederated, and agreed with each other to commit securities fraud, an offense against the United States in violation of 18 U.S.C. § 371. Specifically, Boeth admits that he and his co-conspirators agreed to employ a device, scheme or artifice to defraud in connection with the purchase and sale of PurchasePro securities, using the means and instrumentalities of interstate commerce, in violation of 15 U.S.C. §§ 78j(b) and 78 ff and 17 C.F.R. § 240.10b-5. Boeth admits that he and his co-conspirators committed acts in furtherance of the conspiracy, as described further below.

(8) Boeth admits that he and his co-conspirators conspired to falsely inflate the revenue that PurchasePro recognized and announced to the investing public from the sale of PurchasePro marketplace licenses and other products and services.

(9) In order to induce purchasers to buy the PurchasePro marketplace licenses and other products and services, Boeth and certain of his co-conspirators made oral and written commitments that the co-conspirators would, among other things, do one or more of the following: (i) buy an equivalent or greater amount of products from the license purchasers; (ii) invest in the license purchasers; and (iii) otherwise make the license purchasers whole in the future for the cost of the marketplace license purchases. Collectively, these commitments shall hereinafter be referred to as "side agreements".

(10) Boeth admits that he and certain of his co-conspirators conspired to mislead and otherwise deceive PurchasePro's auditors about the existence of the side agreements. Boeth further admits that he and certain of his co-conspirators agreed to mislead and otherwise deceive PurchasePro's auditors because Boeth and certain of his co-conspirators believed that disclosure of the side agreements would cause PurchasePro's auditors to disapprove of the revenue recognition for the full amount of the sales of marketplace licenses and other products. Boeth admits that he and certain of his co-conspirators agreed not to disclose the existence of the side agreements to the auditors.

(11) Boeth admits that he and certain of his co-conspirators believed that the greater the revenue from the sales of marketplace licenses and other products and services not approved by PurchasePro's auditors, the greater the likelihood that PurchasePro would fail to meet its announced quarterly revenue projections. Boeth further admits that he and certain of his co-conspirators believed that the more PurchasePro failed to meet its announced quarterly revenue projections, the greater the likelihood that the price of PurchasePro's publicly traded stock would decline in value.

(12) Boeth admits that the conspiracy had multiple goals, including, but not limited to, the following:

(A) Boeth admits that it was a goal of the conspiracy that he and certain of his co-conspirators would falsely inflate the revenue reported by PurchasePro to the public and in its filings with the SEC for PurchasePro's fourth quarter of 2000 and first quarter of 2001 by a material amount. Boeth admits that this goal was achieved, in part, because Boeth and certain of his co-conspirators caused PurchasePro to record revenue associated with a fraudulent contract between PurchasePro and a major media company headquartered in the United States ("Media Company") relating to the integration of auction functionality into the Media Company's internet marketplace for small businesses.

(B) Boeth admits that another goal of the conspiracy was to sustain PurchasePro's outward appearance as a growing and successful internet software company in late 2000 and early 2001 when Boeth and certain of his co-conspirators knew that PurchasePro's revenue growth, such as it was, resulted in large part from the systematic use of secret side agreements to sell PurchasePro's revenue generating products.

(C) Boeth admits that another goal of the conspiracy was to meet the revenue estimates for PurchasePro as disseminated by Wall Street to the investing public. Boeth admits that he and certain of his co-conspirators believed that meeting Wall Street's revenue expectations, even by fraudulent means, was the best way to support the price of PurchasePro's publicly-traded stock.

(D) Boeth admits that another goal of the conspiracy was for Boeth and certain of his co-conspirators to profit personally from their fraud. Boeth admits that a goal of

the conspiracy was to allow him to profit from this conspiracy by, among other ways: (i) exercising options to buy PurchasePro stock if the price of the stock rose above the strike price of his options and to sell that same PurchasePro stock at a profit, which goal was not successfully achieved; (ii) keeping his job at PurchasePro and continuing to receive salary at PurchasePro; and (iii) preserving the possibility of obtaining profitable stock options in the future.

(13) Boeth admits that in or about April 2001, Boeth received from PurchasePro stock options for about 35,000 shares of PurchasePro stock that was sought and approved by, among other persons, a senior officer at PurchasePro. In addition, Boeth admits that he received a \$100,000 retention bonus from PurchasePro in April 2001.

III. ACTS UNDERTAKEN IN FURTHERANCE OF THE CONSPIRACY

(14) The following are some of the specific acts that Boeth admits that he undertook or was otherwise involved in and that he admits were committed in furtherance of the conspiracy:

(15) In or about the last week of March 2001, Boeth admits that he and certain of his co-conspirators devised a scheme to fraudulently recognize approximately \$3.65 million in additional revenue for PurchasePro in the first quarter of 2001 by means of a fraudulent contract called a Statement of Work. Pursuant to this fraudulent contract, the Media Company allegedly promised to pay PurchasePro approximately \$3.65 million for integration of auction functionality into the Media Company's internet marketplace for small businesses.

(16) On or about March 30, 2001, Boeth admits that he requested that the Statement of Work be backdated in order to mislead PurchasePro's auditors into falsely believing

that PurchasePro had commenced the integration work specified in the Statement of Work early enough to have completed the work by the end of the first quarter of 2001. At the time that he requested that the Statement of Work be backdated, Boeth admits that he believed that PurchasePro's auditors would not approve recognition of revenue in the first quarter of 2001 for integration work that was not completed in the first quarter of 2001. Boeth admits that the Statement of Work was in fact backdated.

(17) By in or about the first week of April 2001, Boeth admits that he and his co-conspirators knew that no integration work, or virtually no integration work, had been completed by PurchasePro for the Media Company in the first quarter of 2001 relating to the Statement of Work. As a result, Boeth admits that there was no support for PurchasePro to recognize as revenue, in the first quarter of 2001, the approximately \$3.65 million to be paid by the Media Company to PurchasePro.

(18) Knowing that PurchasePro's recognition of any revenue associated with the \$3.65 million Statement of Work would be fraudulent, Boeth did not inform PurchasePro's auditors that no work or virtually no work had been performed under the contract. Boeth admits that Boeth and his co-conspirators caused the \$3.65 million associated with the Statement of Work to be improperly recorded as revenue for PurchasePro in the first quarter of 2001.

(19) Boeth further admits that he knew that the Statement of Work had not even been executed between PurchasePro and the Media Company within the first quarter of 2001. Boeth understood PurchasePro and PurchasePro's auditors would not recognize revenue for a quarter unless the underlying contract supporting the revenue had in fact been executed in writing by the parties by the close of the quarter.

(20) In furtherance of the conspiracy described herein, one or more of Boeth's co-conspirators caused a letter dated April 10, 2001 to be mailed by regular United States Postal Service mail on or about April 13, 2001 from Las Vegas, Nevada to the offices of the Media Company in Dulles, Virginia. The letter sought, among other things, written confirmation from the Media Company that there were no "products to be delivered" by PurchasePro to the Media Company after March 31, 2001 relating to the \$3.65 million in revenue PurchasePro recognized pursuant to the Statement of Work. Boeth admits that the April 10, 2001 letter asked the Media Company to confirm or otherwise acknowledge something Boeth knew was false because, among other reasons, the work contemplated by the Statement of Work had not been completed by March 31, 2001.

(21) On or about April 26, 2001, PurchasePro issued a press release to the public that stated, among other things, that PurchasePro had earned revenue in the first quarter of 2001 in the amount of approximately \$29.8 million. Boeth admits that he and certain of his co-conspirators knew at the time that this April 26, 2001 press release by PurchasePro was materially false and misleading. Among other reasons, Boeth knew that the April 26, 2001 press release was materially misleading because Boeth knew that a substantial portion of the \$29.8 million in announced revenue was improperly recorded as revenue by PurchasePro because it had been achieved, in large part, by "manufacturing revenue" or selling PurchasePro marketplace licenses and other products and services by means of secret side agreements. Boeth further admits that another reason he knew that the April 26, 2001 press release was materially misleading was because the approximately \$29.8 million announced as revenue by PurchasePro

in the press release included approximately \$3.65 million in revenue associated with the fraudulent Statement of Work.

(22) On or about May 29, 2001, PurchasePro filed with the SEC its Form 10-Q for its quarter ending on March 31, 2001, which, included, among other things, the company's financial statements for that quarter. PurchasePro reported in this Form 10-Q that it had earned only about \$16 million in revenue for the quarter versus the approximate \$29.8 million in revenue for the quarter that the company had reported in its press release on or about April 26, 2001. PurchasePro reduced its reported revenue for the quarter to \$16 million, in part, based on its decision that it could not properly recognize the approximate \$3.65 million in revenue from the Statement of Work.

III. CONCLUSION


(23) Boeth admits that this statement of facts does not represent and is not intended to represent an exhaustive factual recitation of all the facts about which he has knowledge relating to the criminal conspiracy described herein.

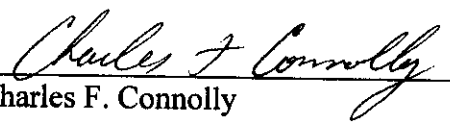
(24) Boeth admits that his actions, as recounted herein, were in all respects intentional and deliberate, reflecting an intention to do something the law forbids, and were not in any way the product of any accident or mistake of law or fact.

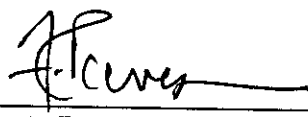
(25) The foregoing statement of facts is a summary of the principal facts that constitute the legal elements of the offense of conspiracy to commit securities fraud. This summary does not include all of the evidence that the government would present at trial or all of the relevant conduct that would be used to determine the defendant's sentence under the Sentencing Guidelines and Policy Statements.

Respectfully submitted,

PAUL J. MCNULTY
UNITED STATES ATTORNEY

By: 
Dana J. Boente
Assistant United States Attorney

By: 
Charles F. Connolly
Assistant United States Attorney

By: 
Adam A. Reeves
Trial Attorney, Criminal Division
United States Department of Justice

Defendant's Stipulation and Signature

After consulting with my attorney and pursuant to the plea agreement I entered into this day with the United States, I hereby stipulate that the above statement of facts is true and accurate. I further stipulate that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

Date: 12/9/03

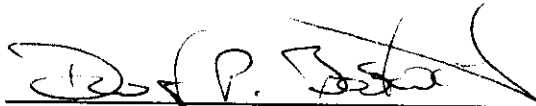


Dale L. Boeth
Defendant

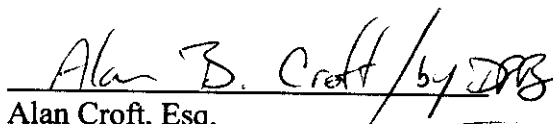
Defense Counsel's Signature

I am the attorney for defendant Dale L. Boeth. I have carefully reviewed the above statement of facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Date: 12/15/03



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